

Remarks

Claims 22-39 are pending in the present application. Claims 22, 26, 31 and 35 are independent claims.

Interview

Applicants appreciate the Examiner for the telephone interview conducted on March 31, 2005. As discussed, additional functional language has been added to claims 31 and 35, to render them allowable.

Abstract

The Abstract has been objected to because it has more than 150 words. To overcome this objection, a new Abstract is provided. Accordingly, the objection should be withdrawn.

Allowable Subject Matter

Applicants acknowledge the Examiner's indication that claims 22-30 are allowed over the prior art of record.

35 U.S.C. § 101 Rejection

Claims 31-39 have been rejected under 35 U.S.C. § 101 because, as best understood, the Examiner alleges that claims 31-39 merely recite data structures and are thus directed to non-statutory subject matter. Applicants respectfully traverse.

A claim to a data structure *per se* has been held non-statutory. *Warmerdam*, 33 F.3d 1354, 1361, 31 USPQ2d 1754, 1760 (Fed. Cir. 1994). However, according to the case law and MPEP §2106 IV B1, when functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases. *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). “Functional descriptive material” consists of data structures and computer programs which impart functionality. MPEP §2106 IV B1.

Independent claims 31 and 35 are directed to a recording medium, which is a machine/computer-readable medium. Claims 31 and 35 also recite that the recording medium comprises a recording layer and a transport stream recorded on the recording layer, thereby providing more structural claim limitations, i.e., the transport stream physically tied to a structure being a recording layer of the recording medium.

Further, claims 31 and 35 recite that the transport stream includes navigation information “used to manage” subsequent transport packets (claim 31) or the at least one data packet (claim 35). Managing transport/data packet(s) is directed to the functional aspects of the data structure and imparts functionality to the data structure. Thus claims 31 and 35 contain functional descriptive material, which is embodied on the machine-readable recording medium having physical structures. As such, claims 31 and 35 are directed to statutory subject matter and are thus allowable.

In addition or in the alternative, claims 31 and 35 also recite that the navigation information includes “program clock reference (PCR) information for

controlling timing associated with the transport stream.” Controlling taxiing associated with the transport stream imparts functionality to the data structure embodied on the machine-readable medium, thereby rendering the claims as statutory.

Accordingly, clearly claims 31 and 35 do not claim descriptive material *per se*, but recite more than mere data structures by providing both structural and functional interrelationships. Therefore, claims 31 and 35 and their dependent claims (due to the dependency) as a whole are directed to statutory subject matter under 35 U.S.C. § 101, and the rejection is improper and must be withdrawn.

In view that claims 31-39 have not been rejected under the prior art of record and that corresponding method claims 22-30 have been indicated as allowed over the prior art of record, indication of allowance of claims 31-39 is proper and respectfully requested.

Conclusion

For the foregoing reasons and in view of the above clarifying amendments, Applicants respectfully request the Examiner to reconsider and withdraw all of the objections and rejections of record, and earnestly solicit an early issuance of a Notice of Allowance.

Should there be any matters which need to be resolved in the present application, the Examiner is respectfully requested to contact Esther H. Chong (Registration No. 40,953) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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Attachment: Abstract